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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 IN THE MATTER OF THE
EXTRADITION OF

13 BRYANT RIVERA,
14 aka "Eduardo,"

15 A Fugitive from the
Government of the United
16 Mexican States.

No. 2:23-mj-03275

GOVERNMENT'S REQUEST FOR DETENTION
PENDING EXTRADITION PROCEEDINGS;
[Proposed] ORDER

1 Plaintiff, United States of America, by and through its counsel
2 of record, the United States Attorney, hereby submits its request for
3 detention pending further extradition proceedings, a memorandum of
4 points and authorities in support of that request.

5
6 Dated: July 6, 2023

Respectfully submitted,

7 E. MARTIN ESTRADA
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10 Assistant United States Attorney
11 Chief, Criminal Division

12 /s/ John J. Lulejian

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 This is an extradition matter. The Government of the United
4 Mexican States ("Mexico") has transmitted to the United States a
5 request for the provisional arrest and extradition of the fugitive,
6 BRYANT RIVERA, also known as "Eduardo" ("RIVERA"), so that he may
7 stand trial for the crime of Femicide, as defined by Article 129 of
8 the Penal Code of the State of Baja California, Mexico.¹ (See Docket
9 No. 1.)

10 In its extradition request, Mexico alleges that on or about
11 January 24, 2022, RIVERA killed Ángela Carolina Acosta Flores by
12 strangulation and left her body in a hotel room that they shared.
13 (See id.)

14 **II. PROCEDURAL BACKGROUND**

15 In accordance with its extradition treaty obligations, the
16 United States filed a Complaint for Provisional Arrest with a View
17 Toward Extradition in this Court on June 29, 2023. (See id.) On
18 that same day, the Honorable Charles F. Eick, United States
19 Magistrate Judge for the Central District of California, issued a
20 warrant for RIVERA's arrest. The arrest warrant was executed on
21 July 6, 2023.

22 **III. ARGUMENT**

23 Like the extradition process as a whole, the determination of
24 whether to release a fugitive on bail is sui generis. The federal
25 statutes governing extradition in the United States, 18 U.S.C.
26 §§ 3181 et seq., do not provide for bail. Further, the Bail Reform
27

28

¹ This offense also is referred to as Femicide.

Act, 18 U.S.C. §§ 3141 et seq., does not apply because an extradition proceeding is not a criminal case.² See Kamrin v. United States, 725 F.2d 1225, 1228 (9th Cir. 1984); In re Extradition of Perez-Cueva, No. 16-MJ-0233, 2016 WL 884877, at *1 (C.D. Cal. Mar. 7, 2016). Rather, case law provides that bail should be granted in an extradition proceeding “only in the most pressing circumstances, and when the requirements of justice are absolutely peremptory.” United States v. Leitner, 784 F.2d 159, 160 (2d Cir. 1986) (quoting In re Mitchell, 171 F. 289, 289 (S.D.N.Y. 1909) (Hand, J.)).

A. Applicable Law

1. A Strong Presumption Against Bail Governs in an International Extradition Proceeding

Unlike in domestic criminal cases, “[t]here is a presumption against bail in an extradition case.” Salerno v. United States, 878 F.2d 317, 317 (9th Cir. 1989); see also United States v. Snyder, No. 13-7082-mj, 2013 WL 1364275, at *2 (D. Ariz. Apr. 3, 2013) (noting that presumption against bail in extradition is “well-established”). The Supreme Court established this presumption against bail in Wright v. Henkel, explaining that when a foreign government makes a proper request pursuant to a valid extradition treaty, the United States is obligated to deliver the person sought after he or she is apprehended:

The demanding government, when it has done all that the treaty and the law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the

² The Bail Reform Act applies only to “offenses” in violation of United States law that are triable in the courts of the United States. See 18 U.S.C. §§ 3141(a), 3142, 3156(a)(2). Here, RIVERA is not charged with an “offense” within the meaning of 18 U.S.C. § 3156, but rather with an offense committed in violation of the law of the requesting state, Mexico.

1 surrender; an obligation which it might be impossible to
2 fulfill if release on bail were permitted. The enforcement
3 of the bond, if forfeited, would hardly meet the
4 international demand; and the regaining of the custody of
the accused obviously would be surrounded with serious
embarrassment.

5 190 U.S. 40, 62 (1903); accord Jimenez v. Aristiguieta, 314 F.2d 649,
6 653 (5th Cir. 1963) ("No amount of money could answer the damage that
7 would be sustained by the United States were the appellant to be
8 released on bond, flee the jurisdiction, and be unavailable for
9 surrender, if so determined. The obligation of this country under
10 its [extradition] treaty with Venezuela is of paramount
11 importance."); United States ex rel. McNamara v. Henkel, 46 F.2d 84,
12 84-85 (S.D.N.Y. 1912) (presentation of forfeited bail to foreign
13 nation "is ridiculous, if not insulting").

14 The prudential reasons for this presumption against bail in
15 international extradition cases are clear and compelling. When, as
16 here, a requesting country meets the conditions of the applicable
17 extradition treaty, the United States has an "overriding interest in
18 complying with its treaty obligations" to deliver the fugitive. In
19 re Extradition of Garcia, 615 F. Supp. 2d 162, 166 (S.D.N.Y. 2009);
20 see also Wright, 190 U.S. at 62. It is imperative that the United
21 States be regarded in the international community as a country that
22 honors its agreements in order to be in a position to demand that
23 other nations meet their reciprocal obligations to the United States.
24 Such reciprocity would be defeated if a fugitive flees after being
25 released on bond. See In re Extradition of Martinelli Berrocal, 263
26 F. Supp. 3d 1280, 1306 (S.D. Fla. 2017) ("[O]ur Executive Branch has
27 a vested interest in enforcing our own treaty obligations for fear
28 that other treaty partners will refrain from doing so in the future.

1 And a difficult but necessary measure in carrying out that
 2 responsibility is to secure a wanted individual and surrender him or
 3 her to the foreign jurisdiction.").

4 2. Fugitives Must Be Detained Unless They Establish
 5 "Special Circumstances" and also Demonstrate that They
 6 Are Neither a Flight Risk nor a Danger to the
 Community

7 In light of the strong presumption against bail established in
 8 Wright and its progeny, international fugitives may not be released
 9 on bail unless they demonstrate that (1) they are neither a flight
 10 risk nor a danger to the community, and (2) "special circumstances"
 11 warrant their release. See, e.g., In re Extradition of Antonowitz,
 12 244 F. Supp. 3d 1066, 1068 (C.D. Cal. 2017); In re Extradition of
 13 Mainero, 950 F. Supp. 290, 294 (S.D. Cal. 1996). "This 'special
 14 circumstances' standard is much stricter than the 'reasonable
 15 assurance' of appearance standard made applicable to domestic
 16 criminal proceedings by the Bail Reform Act." In re Extradition of
 17 Kin-Hong, 913 F. Supp. 50, 53 (D. Mass. 1996). Further, the burden
 18 of showing "special circumstances" rests upon the fugitive. See,
 19 e.g., Salerno, 878 F.2d at 317-18.

20 In evaluating a fugitive's risk of flight in the extradition
 21 context, courts have considered, among other things, the fugitive's
 22 financial means, ties with foreign countries, and incentive to flee
 23 based on the severity of the offense. See, e.g., Martinelli
 24 Berrocal, 263 F. Supp. 3d at 1304; In re Extradition of Beresford-
 25 Redman, 753 F. Supp. 2d 1078, 1091 (C.D. Cal. 2010) (finding that
 26 "well-educated and sophisticated" fugitive facing serious charges in
 27 foreign country had both "incentive and ability to flee" and
 28 therefore presented flight risk); In re Extradition of Patel, 08-430-

1 MJ-HUBEL, 2008 WL 941628, at *2 (D. Or. Apr. 4, 2008) (considering
2 fact that fugitive, physician, had "more than sufficient assets
3 available with which to flee").

4 Crucially, the "special circumstances" inquiry is separate from
5 considerations of danger to the community or risk of flight. See,
6 e.g., Perez-Cueva, 2016 WL 884877, at *2 (special circumstances must
7 exist in addition to absence of risk of flight). "Even a low risk of
8 flight" is not a circumstance sufficiently "unique" to constitute a
9 special circumstance. Leitner, 784 F.2d at 161; see also Salerno,
10 878 F.2d at 317-18 (lack of flight risk "is not a criteria for
11 release in an extradition case"). Conversely, a fugitive who poses a
12 danger to the community or a risk of flight should be denied bail,
13 even in the face of special circumstances. See In re Extradition of
14 Siegmund, 887 F. Supp. 1383, 1384 (D. Nev. 1995).

15 "Special circumstances must be extraordinary and not factors
16 applicable to all defendants facing extradition." Mainero, 950 F.
17 Supp. at 294 (citing In re Extradition of Smyth, 976 F.2d 1535, 1535-
18 36 (9th Cir. 1992)). Courts have considered and rejected a lengthy
19 list of would-be special circumstances, including:

- 20 • The complexity of the pending litigation, see, e.g., United
21 States v. Kin-Hong, 83 F.3d 523, 525 (1st Cir. 1996);
- 22 • The fugitive's need to consult with an attorney and/or
23 participate in pending litigation, see, e.g., Smyth, 976
24 F.2d at 1535-36;
- 25 • The fugitive's character, background, and/or ties to the
26 community, see, e.g., In re Extradition of Noeller, No. 17
27 CR 664, 2017 WL 6462358, at *5 (N.D. Ill. Dec. 19, 2017);

1 Beresford-Redman, 753 F. Supp. 2d at 1089; In re
2 Extradition of Sidali, 868 F. Supp. 656, 658 (D.N.J. 1994);
3 • That the fugitive may have been living openly, see, e.g.,
4 Leitner, 784 F.2d at 160-61; In re Extradition of
5 Pelletier, No. 09-mc-22416, 2009 WL 3837660, at *1, 3-4
6 (S.D. Fla. Nov. 16, 2009);
7 • Discomfort, special dietary needs, or medical concerns that
8 can be attended to while incarcerated, see, e.g., Noeller,
9 2017 WL 6462358, at *8-9; Martinelli Berrocal, 263 F. Supp.
10 3d at 1301-02; United States v. Latulippe, 08-mj-59, 2008
11 WL 2704230, at *1 (D.N.H. July 3, 2008); In re Extradition
12 of Kyung Joon Kim, No. 04-CV-3886, 2004 WL 5782517, at *5
13 (C.D. Cal. July 1, 2004); In re Extradition of Hamilton-
14 Byrne, 831 F. Supp. 287, 290-91 (S.D.N.Y. 1992);
15 • United States citizenship or the pendency of naturalization
16 or other immigration proceedings, see, e.g., Antonowitz,
17 244 F. Supp. 3d at 1072; In re Extradition of Knotek, No.
18 13-CV-9204-BRO-JCG, 2016 WL 4726537, at *7 (C.D. Cal.
19 Sept. 8, 2016); In re Extradition of Orozco, 268 F. Supp.
20 2d 1115, 1117 (D. Ariz. 2003);
21 • The fugitive's professional status, see, e.g., Pelletier,
22 2009 WL 3837660, at *3-4 (allegedly well-respected
23 businessman); In re Extradition of Heilbronn, 773 F. Supp.
24 1576, 1581-82 (W.D. Mich. 1991) (highly-trained doctor);
25 • The availability of electronic monitoring, see, e.g., In re
26 Extradition of Rovelli, 977 F. Supp. 566, 569 (D. Conn.
27 1997);
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- Ordinary delay or delay occasioned by the fugitive in the course of extradition proceedings, see, e.g., Salerno, 878 F.2d at 318; Antonowicz, 244 F. Supp. 3d at 1070; and
- The availability of bail for the same offense in the requesting country, see, e.g., Antonowicz, 244 F. Supp. 3d at 1070; Kyung Joon Kim, 2004 WL 5782517, at *2; Siegmund, 887 F. Supp. at 1386-87; but see In re Extradition of Nacif-Borge, 829 F. Supp. 1210, 1216-17 (D. Nev. 1993).

While in certain exceptional cases some of the above may have been deemed a "special circumstance," courts generally determine "special circumstances" to exist based on a confluence of factors, as opposed to any single consideration. Such findings are highly case-specific and within the discretion of the Court, mindful of the strong presumption against bail and future reciprocity of other countries at stake.

B. Analysis

The United States respectfully requests that the Court detain RIVERA without bond. RIVERA cannot meet his burden and prove that he is neither a significant flight risk nor a danger to the community. Further, even if RIVERA somehow could overcome this hurdle, the United States is not aware of any "special circumstances" that would justify bail in this case.

1. RIVERA Cannot Meet His Burden and Prove that He Is Neither a Significant Flight Risk nor a Danger to the Community

A fugitive charged with crimes in another country is by definition in flight or deliberately absent from that jurisdiction, and the fact that the fugitive has evaded prosecution in that country is indicative of his risk of flight in the United States. Cf. United

1 States v. Botero, 604 F. Supp. 1028, 1035 (S.D. Fla. 1985) ("In the
 2 context of determining whether a defendant poses a substantial risk
 3 of flight, this Court does not find any meaningful distinction
 4 between a person who left the country when he learned of pending
 5 charges and one who already outside the country refuses to return to
 6 face these charges. The intent is the same-the avoidance of
 7 prosecution.") (citing Jhirad v. Ferrandina, 536 F.2d 478,483 (2d
 8 Cir. 1976)). Moreover, in this instance, Mexico seeks RIVERA's
 9 extradition on the charge of Femicide, which carries a maximum term
 10 of imprisonment of 35 to 60 years. Although Mexico requested
 11 RIVERA's provisional arrest based on one count of Femicide, the
 12 United States understands that Mexico may add additional charges when
 13 it submits the formal request for extradition.³

14 Given the substantial potential punishment, RIVERA has every
 15 incentive to flee the jurisdiction. Given that he already fled
 16 Mexico, there is no reason to believe that he will not flee again to
 17 avoid prosecution. Thus, no amount of bail would be sufficient to
 18 guarantee RIVERA's continued presence in these proceedings.

19 In addition to being a flight risk, RIVERA poses a significant
 20 danger to the community. RIVERA has been charged with the cold-

22 ³ See, e.g., David Gotfredson, U.S. citizen suspected in murders
 23 of 3 women in Tijuana, CBS8 (Dec. 17, 2022, 7:17 AM),
 24 [https://www.cbs8.com/article/news/local/us-citizen-suspected-in-](https://www.cbs8.com/article/news/local/us-citizen-suspected-in-murders-of-3-women/509-b2a2c321-c696-43ec-b224-6d92aaa66974)
 25 [murders-of-3-women/509-b2a2c321-c696-43ec-b224-6d92aaa66974](https://www.cbs8.com/article/news/local/us-citizen-suspected-in-murders-of-3-women/509-b2a2c321-c696-43ec-b224-6d92aaa66974); Mark
 26 Lungariello, US citizen wanted in serial murders of prostitutes in
 27 Mexico, N.Y. Post (Nov. 22, 2022, 4:54 PM),
 28 [https://nypost.com/2022/11/22/us-citizen-wanted-in-serial-murders-of-](https://nypost.com/2022/11/22/us-citizen-wanted-in-serial-murders-of-prostitutes-in-mexico/)
[prostitutes-in-mexico/](https://nypost.com/2022/11/22/us-citizen-wanted-in-serial-murders-of-prostitutes-in-mexico/); Greg Norman, US citizen on the run after
 killing multiple prostitutes after sex in Mexico, officials say, Fox
 News (November 22, 2022 1:43 PM EST),
[https://www.foxnews.com/world/us-citizen-on-run-killing-multiple-](https://www.foxnews.com/world/us-citizen-on-run-killing-multiple-prostitutes-mexico-officials-say)
[prostitutes-mexico-officials-say](https://www.foxnews.com/world/us-citizen-on-run-killing-multiple-prostitutes-mexico-officials-say); Rosario Mosso Castro, Asesino
serial de mujeres, Zeta (Nov. 22, 2022),
<https://zetatijuana.com/2022/11/asesino-serial-de-mujeres/>.

1 blooded murder of Ángela Carolina Acosta Flores, who allegedly went
2 to a hotel room with RIVERA and later was found strangled to death
3 and naked in the bathroom of that hotel room. This accusation
4 demonstrates that RIVERA poses a great danger to the community and
5 should not be released from custody.

6 2. RIVERA Cannot Meet His Burden and Establish
7 "Special Circumstances" that Justify Bail

8 RIVERA's risk of flight and danger to the community are
9 sufficient for the Court to deny any forthcoming application for
10 bail. However, even if the Court were satisfied that he is neither a
11 flight risk nor a danger to the community, the United States is
12 unaware of any "special circumstances" that would justify bail in
13 this case.

14 Notwithstanding the foregoing, should the Court be inclined to
15 grant bail in this case, the United States respectfully requests that
16 the Court submit special written findings as to those specific
17 matters that are found to constitute "special circumstances."
18 Moreover, to protect the ability of the United States to meet its
19 treaty obligations to the Government of Mexico, the United States
20 also respectfully requests that the Court notify the parties within a
21 reasonable amount of time in advance of any contemplated release
22 order.

23 **IV. CONCLUSION**

24 For the foregoing reasons, the United States respectfully
25 requests that the Court detain RIVERA pending resolution of this
26 extradition proceeding.

CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for Plaintiff United States of America, certifies that this brief contains 2,389 words, which complies with the word limit of L.R. 11-6.1.

Dated: June 23, 2023

/s/ John J. Lulejian

JOHN J. LULEJIAN

Assistant United States Attorney